

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-136698-08

Date:

February 04, 2009

Husband =

Wife =

Trust =

Date 1 =

Daughter =

Son =

Year 1 =

Year 8 =

a =

b =

Year 2 =

c =

Year 3 =

d =

Year 4 =

e =

Year 5 =

f =

Year 6 =

g =

Year 7 =

h =

i =

CPA =

Attorney =

Year 9 =

Dear :

This letter responds to your representative's letter dated January 13, 2009, and previous correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption to several trusts.

FACTS

The facts and representations submitted are summarized as follows. Husband and Wife (the taxpayers) created Trust on Date 1. Trust provides for the division of the trust property initially into two separate trusts, equal in value, one for the primary benefit of Daughter (Daughter's Trust) and one for the primary benefit of Son (Son's Trust). Son's Trust and Daughter's Trust are trusts from which there could be a generation-skipping transfer (GST) for transfer tax purposes.

The taxpayers made the following transfers to each of Son's Trust and Daughter's Trust in Years 1 through Year 8: \$a in Year 1, \$b in Year 2, \$c in Year 3, \$d in Year 4, \$e in Year 5, \$f in Year 6, \$g in Year 7, and \$h in Year 8. The total amount transferred to each trust was \$i. CPA prepared and the taxpayers timely filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, to report each of his or her respective transfers to the trusts and to pay any gift taxes due on the transfers. On each respective Form 709, Husband and Wife consented to consider the transfers as made one-half by each spouse under § 2513. Husband and Wife had the full amount of his or her respective GST exemption available to allocate on the Forms 709, but did not allocate any of his or her respective available GST exemption to the transfers.

The trust was drafted by the taxpayers' attorney and tax advisor, Attorney. Taxpayers represent that Attorney never advised them as to the potential GST tax consequences of the distribution provisions of the Son's Trust and the Daughter's Trust.

The taxpayers learned of the GST tax consequences of the distribution provisions of the trusts in Year 9. The taxpayers now are requesting an extension of time pursuant to § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate GST exemption to the transfers to the Son's Trust and the Daughter's Trust in Years 1 through 8 and is requesting a ruling that the GST exemption allocated to the transfers will be effective as of the date of the transfers.

LAW AND ANALYSIS

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the term "applicable rate" with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the "applicable fraction." With respect to a GST that is not a direct skip, § 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust and the denominator of which is the value of the property transferred to the trust.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable. Section 2631(c) provides that the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband and Wife are each granted an extension of time of sixty (60) days from the date of this letter to allocate his and her available GST exemption to the transfers made to both the Son's Trust and the Daughter's Trust in Years 1 through 8. The allocations will be effective as of the date of the transfers and will be based on the full value of the assets transferred to the trusts on the date of the transfers. To the extent this amount, the full value of the assets transferred to the trusts on the date of the transfers, exceeds the combined total of the taxpayers' available GST exemption for those years, the trusts will have an inclusion ratio of between one and zero. The allocations should be made by Husband

and Wife on separate supplemental Forms 709 for the years in which the transfers were made and the Forms 709 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Sincerely,

Curtis G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)